

**United States Bankruptcy Court**  
For the NORTHERN District of IOWA

IN RE:

KERRY P. ERICKSON  
LORI J. ERICKSON

Chapter 12

Case No. L89-01580W

**FILED**  
**U.S. BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF IOWA**

JUL 16 1990

**JUDGMENT**

**BARBARA A. EVERLY, CLERK**

- ☒ This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

- ☐ The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

**IT IS ORDERED AND ADJUDGED:**

that Kerry P. Erickson and Lori J. Erickson are found to be in civil contempt of this Court.

IT IS FURTHER ORDERED that a \$100 sanction is imposed against Kerry P. Erickson and Lori J. Erickson, to be paid to the Clerk of the U.S. Bankruptcy Court (by August 15, 1990, along with \$175 filing fee).

IT IS FURTHER ORDERED that a further hearing on the imposition of additional sanctions will be held on August 15, 1990 at 9:00 AM in the Bankruptcy Courtroom 808, Chicago Central Building, E. 4th & Sycamore, Waterloo, IA, if the \$100 sanction and \$175 filing fee is not paid by that date.

Copies mailed with order  
7/16/90 gc

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[Seal of the U.S. Bankruptcy Court]

Date of issuance: July 16, 1990

BARBARA A. EVERLY  
Clerk of Bankruptcy Court

By: Virginia Clark  
Deputy Clerk

JUL 16 1990

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

Chapter 12  
BANKRUPTCY NO.

IN RE:

KERRY P. ERICKSON and  
LORI J. ERICKSON,

L-89-01580W

Debtors.

**ORDER Setting Hearing on Further  
Imposition of Sanctions**

On July 12, 1990, a hearing was held to show cause why the Debtors, Kerry P. Erickson and Lori J. Erickson, should not be held in contempt of this Court for failure to follow Court orders. Neither the Debtors nor their attorney appeared at the hearing. The Court now enters the following findings of fact, conclusions of law and order.

**Findings of Fact**

1. On October 16, 1989, the Debtors filed a Chapter 12 petition. The Debtors tendered a \$25 filing fee with the petition and made application pursuant to Bankruptcy Rule 1006 to pay the remainder of the \$200 filing fee in four installments.

2. On October 16, 1989, an order was entered which provided as follows "IT IS ORDERED that the Debtor pay the filing fee still owing, namely: \$175 as follows:

\$ 87.50 due on November 15, 1989  
\$ 87.50 due on December 15, 1989

No part of the remaining \$175 filing fee has been paid by the Debtors.

3. On October 17, 1989, the Clerk of the Bankruptcy Court sent a notice to all creditors and parties in interest advising of

the filing of the bankruptcy petition and setting the meeting of creditors for November 13, 1989.

4. On October 30, 1989, the Debtors filed a voluntary dismissal of their Chapter 12.

5. On November 3, 1989, the Court entered an order indicating that the dismissal of the case did not relieve the Debtors of their responsibility to pay the balance of the filing fee. The Court specifically indicated that the case would only be dismissed upon payment of the balance of the filing fee. The order went on to provide that the Clerk of the Bankruptcy Court should not issue a notice of dismissal until the remaining \$175 was paid.

6. On April 20, 1990, the Clerk of the Bankruptcy Court issued a "Notice to Show Cause" setting a hearing for May 24, 1990, for the purpose of allowing the Debtors to show cause why they failed to pay the filing fee pursuant to the order dated October 16, 1989.

7. The Debtors did not appear at the May 24, 1990 hearing. The Court then entered an order on May 25, 1990, finding that there was no good cause shown as to why the Debtors should not pay the remaining \$175 filing fee. The order went on to provide as follows

"IT IS THEREFORE ORDERED that the Debtor shall pay the remaining filing fee of \$175 to the Clerk of the Bankruptcy Court, P.O. Box 74890, Cedar Rapids, Iowa, 52407, within 30 days from the date of this order."

That order was sent to the Debtors by certified mail. The U.S. Post Office returned a postal card showing that Kerry P. Erickson signed for the certified envelope containing a copy of the Court's May 25, 1990 order on May 29, 1990.

8. The Debtors failed to pay the filing fee of \$175 within 30 days as required by the order of May 25, 1990. The Court then entered an order on June 28, 1990, setting a hearing for July 12, 1990, to show cause why Kerry P. Erickson and Lori J. Erickson should not be held in contempt of court. The notice specifically provided that the citation of contempt was being issued to Kerry P. Erickson and Lori J. Erickson for their failure to follow the Court's order of May 25, 1990, in that they have failed to pay the \$175 filing fee to the Clerk of the Bankruptcy Court within 30 days from the date of that order. That notice of hearing was also sent to the Debtors by certified mail. The postal card returned from the U.S. Post Office shows that Kerry P. Erickson signed for the certified envelope on July 2, 1990.

9. The Debtors have not appeared at any of the hearings the Court has scheduled on this matter and have not put forth any reason to the Court why they have failed to pay the filing fee as the Court has ordered.

#### **Discussion and Conclusions of Law**

Bankruptcy Rule 9020 provides that the Court on its own initiative may give a notice of civil contempt. The rule goes on to provide that if the Court finds a contempt has been committed, a copy of the order shall be served upon the entity named in the citation of contempt. The order shall become effective 10 days after service of the order and shall have the same force and effect

as an order of contempt entered by the district court, unless, within the 10 day period the entity named in the citation for contempt serves and files with the Clerk of the Bankruptcy Court objections prepared in the manner provided under Bankruptcy Rule 9033(b).

The Court finds that due and timely notice of the citation of contempt was given to Kerry P. Erickson and Lori J. Erickson. The Court also finds that Kerry P. Erickson and Lori J. Erickson have failed to present any reason why they should not be held in contempt of this court for willfully failing to follow the Court's order to pay the \$175 filing fee.

The issue which remains for determination is the sanction to be imposed against the Debtors, Kerry P. Erickson and Lori J. Erickson, for their contempt. No evidence has been presented to the Court as to why Mr. & Mrs. Erickson have failed to pay the filing fee. The Court can only assume that the Debtors have serious financial difficulty which makes it difficult for them to comply with the Court's order. The Court is not interested in imposing an unduly harsh or punitive sanction against the Debtors. However, the Court does believe that some imposition of sanctions is necessary in order to impress upon the Debtors the seriousness of a violation of this Court's order and to coerce compliance with the order to pay the \$175 filing fee.

Consequently, the Court will impose a \$100 sanction against the Debtors. This sanction is imposed in order to coerce Kerry P. Erickson and Lori J. Erickson into complying with the Court's order

to pay the \$175 filing fee. In addition, the Court will hold a further hearing on the imposition of additional sanctions on **August 15, 1990**, unless prior to that date, the \$175 filing fee and the \$100 sanction are paid to the Clerk of the Bankruptcy Court. If those sums are not paid by that date, the Court will hold a further show cause hearing to impose additional sanctions for the civil contempt of Kerry P. Erickson and Lori J. Erickson. Mr. & Mrs. Erickson are admonished that if they fail to pay the monies by **August 15, 1990**, that they should appear at the hearing on that date so that they can be heard on the issue of their failure to comply with the Court order. The Court anticipates that if the monies are not paid by **August 15, 1990**, that a significantly more severe sanction will be imposed against Kerry P. Erickson and Lori J. Erickson.

IT IS THEREFORE ORDERED that Kerry P. Erickson and Lori J. Erickson are found to be in civil contempt of this Court.

IT IS FURTHER ORDERED that a \$100 sanction is imposed against Kerry P. Erickson and Lori J. Erickson, to be paid to the Clerk of the U.S. Bankruptcy Court. Judgment for this sum shall enter accordingly.

IT IS FURTHER ORDERED that a further hearing on the imposition of additional sanctions will be held on:

**AUGUST 15, 1990 at 9:00 A.M.**

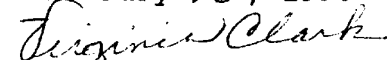
in Bankruptcy Courtroom 808, Chicago Central Building, E. 4th & Sycamore, WATERLOO, Iowa.

If Kerry P. Erickson and Lori J. Erickson pay the remaining \$175 filing fee plus the \$100 sanction being imposed pursuant to this order prior to August 15, 1990, the hearing scheduled for that date will be cancelled and the Debtors need not appear. However, if the remaining balance of the filing fee and the \$100 sanction are not paid by that date, the Court will conduct a further hearing on the imposition of additional sanctions for the Debtors civil contempt. Kerry P. Erickson and Lori J. Erickson are admonished that they should appear at that hearing in order to be heard on the issue of what additional sanctions should be imposed for their willful failure to follow Court orders.

DONE AND ORDERED this 16<sup>th</sup> day of July, 1990.

  
MICHAEL J. MELLOTT  
Chief Bankruptcy Judge

Copies to:  
Dale Putnam,  
Atty for Debtor;  
Kerry P. Erickson and  
Lori J. Erickson, Debtors,  
by certified mail;  
U.S. Trustee;  
Carol F. Dunbar, Trustee;  
this July 16, 1990

  
Deputy Clerk, U.S. Bankruptcy Court  
P.O. Box 74890  
Cedar Rapids, Iowa 52407